

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**DPV TRANSPORTATION, INC.,
(U. S. DOT No. 167296)**

Petitioner

**Docket No. FMCSA-2010-0254
(Eastern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

1. Background

On July 12, 2010, DPV Transportation, Inc. (Petitioner) requested administrative review of a proposed conditional safety rating pursuant to 49 CFR 385.15. The proposed rating was assigned following a compliance review of Petitioner completed on June 10, 2010.¹

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.²

The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.³ A pattern of

¹ Although Petitioner did not include a copy of the compliance review report with its petition, a copy was obtained from the Federal Motor Carrier Safety Administration's Electronic Document Management System and has been placed in the docket.

² Appendix B to 49 CFR part 385, section III. A.(b).

³ These regulations are identified in Appendix B to 49 CFR part 385, section VII. However, the initial rating for the vehicle rating factor will be conditional if the carrier has a vehicle out-of-service rate exceeding 34% based on three or more roadside inspections during the 12 months preceding the compliance review.

noncompliance with a critical regulation exists when the number of violations equals 10 percent or more of the instances examined.⁴ The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier.

A carrier is assessed one point for each violation of an acute regulation or each pattern of noncompliance with a critical regulation.⁵ The carrier will be rated unsatisfactory in a rating factor if the acute and/or critical violations for that factor total two or more points. It will be rated conditional in a factor if the acute and/or critical violations equal one point.⁶

Under the Safety Rating Table, an unsatisfactory rating in any one rating factor will result in an overall conditional rating. Petitioner's conditional safety rating resulted from an unsatisfactory rating for rating factor three (operational). Petitioner was also rated conditional for rating factor four (vehicle).

Petitioner was assessed two points for the operational rating factor based upon an alleged pattern of noncompliance with critical regulation 49 CFR 395.8(a), failing to require a driver to make a record of duty status. Petitioner was assessed one point for the vehicle rating factor based upon an alleged pattern of noncompliance with 49 CFR 396.11(a), failing to require a driver to prepare a vehicle inspection report. In both cases, nine violations were discovered out of 28 records checked, which is a violation rate of approximately 33%.


⁴ To constitute a pattern, however, there must be more than one violation of a critical regulation. See Appendix B to 49 CFR part 385, section II.(g).

⁵ However, patterns of noncompliance with critical regulations in 49 CFR part 395 are assessed two points, in accordance with Appendix B to 49 CFR part 385, section II. (h).

⁶ Except as noted in Footnote 3, *supra*.

With respect to the § 395.8(a) violations, Petitioner only addressed the one trip cited as an example of the violation in the compliance review report.⁷ Petitioner claimed that it used a 7-passenger luxury sports utility vehicle (SUV) to provide this transportation and that no record of duty status was required because the SUV was not a commercial motor vehicle.⁸ Even assuming, for the sake of argument, that Petitioner's allegation is accurate, it failed to address the eight other alleged violations of § 395.8(a) disclosed by the compliance review. Eight violations of § 395.8(a) would still yield a violation rate of approximately 28%, well over the 10% threshold for establishing a pattern of noncompliance. Consequently, Petitioner has not shown that the Agency committed error in assigning an unsatisfactory rating for the operational factor.⁹

Accordingly, *It Is Hereby Ordered*, the petition for administrative review filed by DPV Transportation, Inc., is denied.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

8-11-10
Date

⁷ This trip involved transportation from Medford, Massachusetts to Ledyard, Connecticut on May 22, 2010.

⁸ It should be noted that the confirmation provided to the client from Petitioner's dispatch records lists a 10-15 passenger corporate van in addition to the SUV. According to Petitioner, it used the SUV instead of the van.

⁹ Given this conclusion, it is unnecessary to address the alleged § 396.11(a) violations.

CERTIFICATE OF SERVICE

This is to certify that on this 10 day of August, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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